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MAILED

JAN 17 2003

Technology Center 2100

Paper No. 14

In re Application of Bartscheen et al.
Application No. 09/124,288
Filed: July 28, 1998
Attorney Docket No. GR 98 P 2078
Title: MEMORY DEVICE AND METHOD FOR
OPERATING THE MEMORY DEVICE

: DECISION GRANTING PETITION
: TO WITHDRAW THE HOLDING OF
: ABANDONMENT UNDER
: 37 C.F.R. §1.181 (a)

This is a decision on the petition with fee filed September 9, 2002 to revive under 37 C.F.R. § 1.137(B). Based upon a review of the file history, the petition is being treated as a petition to withdraw the holding of abandonment mailed July 8, 2002 (Paper No. 12) under 37 C.F.R. § 1.181(a).

The petition is **GRANTED**.

| | <u>Applicable Prosecution History</u> |
|---------------------|---|
| April 12, 2000 | Non-final Office action mailed (Paper No. 6). |
| Sep 12, 2000 | Amendment A filed (Paper No. 7) with two month extension of time. |
| Jan 25, 2001 | Teleconference held (see remarks on page 5 of Paper No. 10). Supplemental Amendment B filed via fax. |
| Feb 27, 2001 | Notice of Non-Responsive Amendment mailed (Paper No. 11). |
| March 5 or 13, 2001 | Telephone interview (no paper no.) wherein the examiner indicates the reason for the non-responsive notice was moot and no further action by applicants was needed. |
| July 8, 2002 | Notice of Abandonment mailed (Paper No. 12) with examiner indicating, "No reply has been received" to the Office letter mailed on 27 February 2001. |

Issue

Does the record support petitioners' statement that no Office action was outstanding and therefore the Notice of Abandonment was improper?

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Decision

The practitioner had provided a *responsive* amendment on September 12, 2000. Subsequent to that the examiner apparently attempted to initiate an examiner's amendment to place the case in condition for allowance. Rather than approving that proposed amendment, the applicants elected to file a supplemental response on January 25, 2001 via facsimile. The record suggests a problem occurred with the fax transmission that caused the examiner to indicate the supplemental response of January 25, 2001 was non-responsive and to set a one-month period for reply. Applicants' representative was notified either on March 5 (examiner's interview summary found in the file) or March 13 (see petitioners' statement, page 3), 2001 that the supplemental response was no longer defective. On July 8, 2002, a Notice of Abandonment was mailed with the examiner indicating, "No reply has been received."

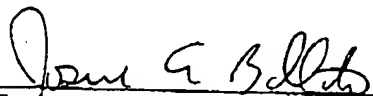
A review of the record shows the first amendment filed on September 12, 2000 was responsive under 37 C.F.R. § 1.111. Therefore, even if applicants' filing of January 25, 2001 was held ultimately to be non-responsive, the examiner should have complied with the guidelines set forth in MPEP § 707, Examiner's Letter or Action" and sent out a complete Office action in response to applicants filing of September 12, 2000.

The record supports petitioners' statements that they were notified in March 2001 that the supplemental amendment filed January 25, 2001 was responsive and that no further response was necessary *from applicants*. It should be noted that both amendments filed on September 12, 2000 and January 25, 2001 were formally entered into the application. Therefore, the examiner's indication of the application being abandoned in view of applicants' failure to timely file a proper reply to the Office letter mailed on 27 February 2001 was in error.

Accordingly, the petition is GRANTED. The application was not abandoned in fact. The Office regrets any inconvenience this error may have caused petitioners.

* As no fee is required for a petition filed under 37 C.F.R. § 1.181, the application file is being forwarded for a refund of the petition fee of \$1280.00 to deposit account no. 12-1099. Thereafter the application will be forwarded to the examiner for consideration of applicants' amendments filed on September 12, 2000 and January 25, 2001. Should the applicants not receive a response from the Office within two months from the mail date of this decision, they are advised to contact the examiner's supervisor, Mr. Ayaz Sheikh at 703-305-9648.

Telephone inquiries on this decision should be directed to the undersigned at 703-308-0269.



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Special Programs Examiner
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Date: May 23, 2003

To: Latrice Sims

From: Gilbert Calice

(703) 308-5077

Fax No. (954) 925-1101

E-mail: landrade@patentusa.com

Subject: 2nd Request of Outstanding Refunds

OFFICE OF FINANCE
REFUND STATION
2003 JUL 29 PM 4:17
US PATENT & TRADEMARK
OFFICE

Dear Ms. Sims,

Attached is another summary of outstanding refunds due to our account as of May 31, 2003 along with the letters submitted requesting the refund. We did receive a few of the old refunds a few weeks ago and then it stopped. I am faxing the old outstanding refund requests for further review. Thanks so much for your help.

Sincerely,

Gilbert Calice

Gilbert Calice

For the Firm

| OUTSTANDING CREDITS | \$ AMOUNT | ITEM | SERIAL # | DOCKET# | 109 CK.# | DATE CREDIT REQUEST | LAST CORRESPONDENCE |
|----------------------------|-----------|---------------|------------|---------------|----------|-------------------------|------------------------|
| | 130.00 | DEC | 10/047,613 | MMIT213 | 477 | MAY 6 2002 | mary adel 703-308-2028 |
| | 130.00 | DEC | 09/781,836 | GR 98 P 2318 | 494 | JUN 3 2002 | |
| | 130.00 | PET FEE | 10/026,240 | A-2869 | 496 | JUN 3 2002 | |
| credit requested | 130.00 | Fee code 1051 | 10/001,175 | WEB-20105 | 554 | 11/25/2002 | |
| | 110.00 | EXT | 09/100,578 | FS-2136 | 565 | 11/15/2002 | |
| dupl chg 10/21 & 12/30 | 740.00 | FILING FEE | 10/273,524 | MUH-12355 | 4245-1 | 12/30/02 cr req 1/16/03 | |
| credit requested | 54.00 | | 09/728,336 | TER-1054-8/23 | 574 | 12/31/2002 | |
| deposit | 1,280.00 | | 09/124,288 | GR 98 P 2078 | 580 | 1/17/2003 | |
| credit requested | 130.00 | requested crd | 09/789,342 | GR 00 P 1335 | 589 | 2/3/2003 | |
| | 180.00 | requested crd | 09/833,008 | GR 00 P 1722 | 592 | 2/19/2003 | |
| | 42.00 | | 10/335,530 | F-3869-1 RI | 597 | 3/4/2003 | |
| dupl Chrd on 04/09/02+2/12 | 130.00 | requested crd | 08/015,400 | 5,890,430 | 880-1 | 2/12/2003 | |
| | 110.00 | | 09/707,031 | GR 98 P 3312 | 600 | 3/12/2003 | |
| | 180.00 | | 09/603,751 | MP.N. 99/612 | 606 | 3/19/2003 | |
| sw/h/b SE crd req 03/31/03 | 375.00 | | 10/397,144 | 2912-152 | 6848 | 3/25/2003 | |
| | 180.00 | | 09/564,800 | 013550-046 | 623 | 4/30/2003 | |
| | 120.00 | reqd rfd PTO | 10/075,187 | GLM-1049CIP | 627 | 5/13/2003 | |
| To Darrel Forte | 110.00 | PTO chd | 09/460,352 | GR 98 P 5909 | 628 | 5/16/2003 | |
| | 1,280.00 | Rqstd rfd | 09/291,663 | HEM 96/816 | 629 | 5/23/2003 | |